

Guidance for the Agencies under the Jurisdiction of the Governor
Regarding Procurement Communications Reporting Requirement 30 ILCS 500/50-39
February 22, 2011

Who must report?

The reporting requirement applies to all State agency employees involved in discussions with individuals outside of their own agencies concerning procurement decisions presently under consideration or to be considered in the near future (as further explained below). For purposes of this guidance, a “State employee” is (a) any person employed full-time, part-time or pursuant to a personal services contract with the State and whose employment duties are subject to the direction and control of the State with regard to the material details of how the work is to be performed; (b) all appointed or elected commissioners, trustees, directors, or board members of a board of a State agency; or (c) any other appointed or person in a State agency regardless of whether the position is compensated.

Where do I report?

Reports are made on the Procurement Policy Board (PPB) website at
<http://www2.illinois.gov/ppb/Pages/default.aspx>

What is a reportable communication?

“Any written or oral communication received by a State employee that imparts or requests **material information** or makes a **material argument** regarding **potential action** concerning a **procurement matter**, including, but not limited to, an application, a contract, or a project.” 30 ILCS 500/50-39(a) (excerpt, emphasis added).

A communication must:

- (1) Be material
- (2) Be regarding a potential action,
- (3) Pertain to a procurement matter

If all three requirements are satisfied and none of the exceptions explained below apply, then the communication must be reported.

What is “material information” or a “material argument?”

“Material information” is information that a reasonable person would deem important in determining his or her course of action. It is information pertaining to significant issues, including, but not limited to, price, quantity, term and terms of payment or performance. It does not include communications that are a part of the formal procurement process such as the posting of procurement opportunities, the process for approving a Procurement Business Case (“PBC”), submission of bids and the like.

A “material argument” is a communication that a reasonable person would believe was made for the purpose of influencing procurement decisions. It does not include general information about products, services or industry best practices, or a response to a communication initiated by an employee of the

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State for the purposes of providing information to evaluate new products, trends, services, or technologies.

In determining whether a communication is material, the State employee should consider (a) whether the information conveyed is new or already known to the State agency involved in the communication and/or (b) the likelihood that the information would influence a pending procurement matter. Information that is already in the State agency's possession is not material.

What is a "potential action" regarding a procurement matter?

A "potential action" is one that a reasonable person would believe could affect the initiation, development or outcome of a pending procurement matter. A "potential action" is not a matter that has occurred or will occur after the procurement matter has concluded.

What topics are "procurement matters" that may need to be reported?

"Procurement matters," unless otherwise excluded, are the processes of procuring specific goods, supplies, services, professional or artistic services, construction, leases of real property, whether the State is lessor or lessee, or capital improvements, and include master contracts, contracts for financing through use of installment or lease-purchase arrangements, renegotiated contracts, amendments to contracts, and change orders. Procurement matters are activities that occur during the time period (a) beginning with the time an agency has identified a need for a procurement as documented by the initiation of a Procurement Business Case or equivalent document, and (b) continuing through the publication of an award notice or other completion of a final procurement action, the resolution of any protests, and the expiration of any protest or Procurement Policy Board review period, if applicable.

If procurement matters meet the tests of materiality and potential action and are not otherwise excluded, they may include the following:

- 1) Drafting, reviewing or preparing specifications, plans or requirements;
- 2) Drafting, reviewing or preparing any invitations for bids, requests for proposals, requests for information, sole source procurement justifications, emergency procurement justifications, or selection information;
- 3) Evaluating bids, responses, or offers, other than communications among an evaluation team and any technical advisors thereto relating to the evaluation of a procurement not yet awarded;
- 4) Letting or awarding a contract;
- 5) Resolving protests;
- 6) Determining inclusion on prequalification lists or prequalification in general;
- 7) Identifying potential conflicts of interests or the voiding or allowing of a bid, offer or subcontract for a conflict of interest;
- 8) Approving change orders or the renewal or extension of an existing contract.

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What communications are excluded from the reporting requirement?

- (1) Statements by a person publicly made in a previously scheduled, organized public forum, including but not limited to those meetings subject to the Open Meetings Act. A meeting may be a public forum even if a reasonable fee is required. Examples include educational seminars and press conferences.
- (2) Statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter.
- (3) Statements made to or from a State employee and the agency head or other employees of that agency.
- (4) Statements made to the employees of the Executive Ethics Commission (but, pursuant to the statute, not statements received from the EEC if material and not otherwise exempt).
- (5) Communications which are privileged, protected or confidential under law including, but not limited to, the attorney-client privilege.
- (6) Communications regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of a contract.
- (7) Communications regarding matters exempt from the Illinois Procurement Code in section 30 ILCS 500/1-10:
 - a. Contracts between State governmental bodies
 - b. Grants
 - c. Purchase of care
 - d. Hiring of an individual as an employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that individual
 - e. Collective bargaining contracts
 - f. Purchase of real estate
 - g. Contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations
 - h. Procurement expenditures by the Illinois Conservation Foundation when only private funds are used
 - i. Procurement expenditures by the Illinois Health Information Exchange Fund.
- (8) Communications regarding small purchases pursuant to 30 ILCS 500/20-20.
- (9) Communications regarding change orders, contract amendments or contract extensions that do not contain any other material changes and are at or below the small purchase dollar threshold.

What are the penalties for non-compliance?

State employees who knowingly and intentionally fail to comply with the reporting requirements will be subject to suspension or discharge. 30 ILCS 500/50-39(e)

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If the communication of one party is exempt while communication from the other party is not exempt, must the non exempt communication be reported?

Yes, only the non-exempt communication is required to be reported. For example, communications made to employees of the Executive Ethics Commission need not be reported whereas communications made by an employee of the Executive Ethics Commission must be reported by the receiving employee unless otherwise exempt.

Are communications conducted during contract negotiation and before contract execution exempt from disclosure?

Yes, these communications occur after the procurement matter is complete.

Are communications that are already published on a public medium, such as the Procurement Bulletin, exempt from the disclosure requirement?

Yes, all information published on a State of Illinois electronic or print medium is considered published in a public forum. As a result, the communication does not have to be reported.

What details must be reported?

Three categories of information must be reported:

Public Information	State Employee Information	General Details
<ul style="list-style-type: none">• Identity of each person issuing the written or oral communication• Identity of the individual or entity represented by the person issuing the communication, if applicable.• Description of the action requested or recommended by the person issuing the communication• Phone number of the person issuing the communication (if the communication occurred by phone)• The location of the person issuing the communication.	<ul style="list-style-type: none">• Identity of employee(s) receiving the communication• Job title of employee(s) receiving the communication• Identity of the employee(s) responding to the communication• Job title of employee(s) responding to the communication• The location of the employee(s) involved in the communication• Phone number of employee(s) involved in the communication (if the communication occurred by phone)	<ul style="list-style-type: none">• Summary of points made by each person involved in communication• Duration of communication• Date of communication• Time of communication transmission• Communications should be reported within 30 days